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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JUSTIN E. HUBBERT,

12 Petitioner,

13 v.

14 UNITED STATES OF AMERICA,

15 Respondent.

Case No. C05-5149FDB

ORDER DENYING 2255 PETITION

16 Petitioner pleaded guilty to a felony Information charging Receipt of Visual Depictions of
17 Minors Engaged in Sexually Explicit Conduct, was sentenced to a 27-month term of imprisonment
18 (low end of the Guidelines range), followed by a three-year period of supervised release. Petitioner
19 did not appeal the sentence, and the conviction was final no later than February 10, 2004. Petitioner
20 seeks re-sentencing in light of *Blakely v. Washington*, 124 S. Ct. 2531 (2004) and *United States v.*
Booker, 125 S. Ct. 738 (2005).

21 The Court, having considered Petitioner's Motion, the Government's response, and being
22 fully advised, agrees that for the following reasons, fully elaborated in the Government's Response to
23 the 2255 Petition, the Petition must be denied: (1) the Petition is time-barred (the Petition was filed
24 on February 28, 2005 more than one year after his conviction was final; (2) *Booker* does not apply

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26 ORDER - 1

1 retroactively to criminal cases on collateral review; (3) Petitioner failed to raise the *Blakely* issue
2 before the District Court or on appeal, and, thus, has defaulted on this claim; moreover, *Booker* does
3 not provide a basis for showing cause and prejudice for this default.

4 NOW, THEREFORE, IT IS ORDERED: Petitioner's 2255 Petition is DENIED and this
5 cause of action is DISMISSED.

6 DATED this 25th day of May, 2005.

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8 FRANKLIN D. BURGESS
9 UNITED STATES DISTRICT JUDGE

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